

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**CLARKSON UNIVERSITY**

**Employer**

**and**

**Case 3-RC-11405**

**CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC., LOCAL 1000, AFSCME, AFL-CIO<sup>1</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The parties stipulated that the Employer is a New York State corporation with its principal office and university campus at 8 Clarkson Avenue, Potsdam, New York, where it provides higher education services. During the last twelve months, a representative period, the Employer derived gross revenues in excess of \$1,000,000, and purchased and received at its Potsdam, New York, campus goods and materials valued in excess of \$50,000 directly from points located outside the State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section (2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

The Employer declines to recognize the Petitioner as the collective-bargaining representative of the employees described in the unit below unless and until the unit is certified. Thus, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The parties stipulated at the hearing that there is no collective-bargaining agreement that would be a bar to an election.

The parties have stipulated that the following employees constitute an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

All regular full-time employees in the facility and services department employed by the Employer at its Potsdam, New York university campus, including all clerks (shipping and receiving clerks, mail clerks, senior postal clerks, supply/distribution clerks, courier/delivery clerks), maintenance mechanics (automotive, boiler operators, carpenters, electricians, HVAC, plumbers), senior groundskeepers, Zamboni maintenance, Cheel Arena maintenance machine operators, duplicating/mailling operator, and senior custodians; excluding all other clerical employees, confidential employees, guards and all professional employees and supervisors as defined in the Act and all other employees.

However, the parties are unable to agree to the status of the following eight individuals: Richard Bradshaw, John Frary, Gretchen Fullerton, Renate McCanns, Douglas Randall, Ronald Stone, Bruce Sullivan, and Neil Willmart. The Petitioner asserts that each of these individuals should be excluded from the unit on the basis that they are supervisors within the meaning of Section 2(11) of the Act. In this regard, the Petitioner asserts that each of these individuals has the authority to assign and responsibly direct employees, and in doing so exercises independent judgment. The Petitioner further asserts that McCanns, Randall, and Frary also possess the authority to hire, discipline, and/or reward employees, or to effectively recommend such action. The Employer takes no position with regard to the supervisory status of the individuals in question. However, the Employer asserts that, in the event that any of these individuals are

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<sup>1</sup> The Petitioner's name appears as amended at the hearing.

found not to be supervisors within the meaning of the Act, they share a community of interests with, and should be included in, the unit found appropriate.

The Employer, a private university located in Potsdam, New York, has a total enrollment of approximately 2,800 students, and has approximately 550 employees, including faculty, other salaried, and hourly-paid employees. The facilities and services department, which has approximately 110 employees, is headed by Director of Facilities and Services Bill Dillon, who reports to James Manero, Vice President for Business and Financial Affairs. Manero reports directly to the Employer's President. The facilities and services department consists of a skilled trades maintenance group of approximately 26 employees; a custodial group of approximately 60 employees; approximately 15 grounds employees; approximately 12 employees assigned to business services; and an unspecified number of automotive mechanics.

The following individuals report directly to Dillon: Custodial and Business Services Manager Clayton Stoddard, Safety Manager Mike McDonald, Grounds and Fleet Manager Ian Rutherford, Service Response Schedule/Planner Roy Wilson, and Maintenance Manager Bill MacDonald. In addition, Assistant Maintenance Manager Timothy Albright, who reports to Bill MacDonald, rotates with Wilson, McDonald, and MacDonald as a manager on-call. The record reflects that these individuals, who are paid on a salary basis, have the authority to assign work and/or discharge employees. It is clear from the record that the parties agree, and I find, that they are supervisors within the meaning of the Act. In addition, the parties agree and I find that Senior Department Secretary Karen Fuhr, who reports directly to Dillon, and Administrative Secretary Jan Morgan, should be excluded from the unit as either confidential employees or as business office clerical employees. All of the remaining employees in the facilities and services department are paid on an hourly basis. The duties and responsibilities of the eight individuals in question and my conclusions regarding their status are set forth below.

**Renate McCanns** is classified as a Custodial Supervisor. She is responsible for the custodial work that is performed in 15 academic and sports buildings. McCanns reports directly

to Custodial and Business Manager Stoddard. McCanns testified that she has 25 employees under her direction, including Assistant Supervisor Bruce Sullivan. McCanns works the night shift, from 9:00 p.m. to 5:30 a.m. McCanns normally does not perform custodial duties, although she demonstrates for new employees how she wants certain tasks performed and she volunteers to help out in emergencies.

McCanns is responsible for assigning work to employees on her shift. She stated that she makes such assignments based on her knowledge as to how well the employees perform certain tasks, such as shampooing carpets and stripping and waxing floors. Her knowledge as to employee abilities is based on observing them. Generally, employees have the same assignments each day, unless an employee is absent. In those circumstances, McCanns decides which employee should fill in. Although McCanns testifies that she has the authority to permanently reassign employees, she would not do so without first discussing it with Stoddard.

McCanns spends part of her shift checking the employees' work and "troubleshooting." If she sees a problem in the performance of a task, McCanns informs the employee of the problem either in person or by leaving a note. McCanns regularly instructs employees to redo tasks when it is apparent to her that the employees have not correctly performed their tasks. She has issued written statements to employees indicating that their work was not satisfactory and, after issuance, showed the statements to Stoddard. However, McCanns testified that, if she feels any discipline greater than a written counseling or reprimand is warranted, she first consults with Stoddard as to how to proceed. In this regard, although three employees under McCanns' direction were terminated, on one of these occasions McCanns had no involvement, on another occasion Stoddard was present when the relevant incident occurred, and on the other occasion McCanns' involvement was limited to reporting the misconduct to her superiors. Moreover, McCanns calls Stoddard at his residence if she has a "big issue" with an employee in order that Stoddard can be present the following evening to meet with McCanns and the employee.

McCanns asks employees if they want to be placed on an overtime list. Overtime assignments are then rotated so as to equalize opportunities. McCanns and Assistant Supervisor Sullivan jointly decide who will work overtime. McCanns has authority to grant overtime in cases of an emergency. Otherwise, Stoddard makes this decision.

McCanns is responsible for completing annual performance evaluations of the employees under her direction, including Assistant Supervisor Sullivan and the employees who work on Sullivan's shift. The evaluation forms require that employees be rated as needing improvement, good, very good, or outstanding. The rating an employee receives on the evaluation determines whether the employee receives a wage increase and the amount of the wage increase. In this regard, last year, employees rated as needing improvement received no wage increases, whereas employees rated as good, very good, or outstanding, have received annual increases to their base wage rate of \$500, \$800, and \$1100, respectively. Although the size of the increase for each rating is decided by university administrators and is not known at the time the evaluations are completed, it is commonly recognized that there is a correlation between the rating and the amount of the increase. McCanns has been asked on only one occasion to justify the content of an evaluation that she prepared. On that occasion, after explaining her reasons to Dillon, the evaluation was not changed.

McCanns has served on two hiring committees.<sup>2</sup> McCanns testified that on each occasion, the individual that she recommended to Stoddard was hired. The record does not indicate the extent to which Stoddard conducted an independent assessment of the candidates on those occasions. However, McCanns noted that, on one of those occasions, the hiring committee was evenly divided in their recommendation, and the decision was left to Stoddard and the human resources department. McCanns described many occasions when she had no input into the hiring of custodians to work in the buildings within her area of responsibility. In this regard, Associate Human Resources Director Carroll testified that hiring decisions are made by

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<sup>2</sup> The Employer forms a hiring committee for each job opening that becomes available. Frequently, non-supervisory employees in the petitioned-for unit also serve on the hiring committees.

the “hiring managers.” When there is a vacancy, the hiring manager forms a search committee that includes employees working in the area, including hourly non-supervisory employees. The committee decides which applicants to interview, ranks those who are interviewed, and makes a recommendation to the hiring manager. Carroll testified that the hiring manager normally sits in on the job interviews.

McCanns independently approves employees’ vacation requests. However, in accordance with the Employer’s policies, custodians are asked not to take a vacation during certain busy periods, such as alumni weekends or graduation, and McCanns has denied vacation requests encompassing the dates of those events. In addition, on several occasions McCanns has denied vacation requests because other employees in the same work area had already scheduled vacation for the same period and it was necessary to maintain adequate coverage.

All hourly employees are classified between pay levels 14 and 20. McCanns is paid at hourly grade 20, in which pay ranges between \$13.65 and \$20.48 per hour. The custodians are paid at grade 14, which ranges between \$8.19 and \$12.29 per hour.

Section 2(11) of the Act defines a “supervisor” as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

As the Board has noted in numerous cases, the statutory indicia outlined in Section 2(11) are listed in the disjunctive, and only one need exist to confer supervisory status on an individual. See, e.g., Phelps Community Medical Center, 295 NLRB 486, 489 (1989); Ohio River Co., 303 NLRB 696, 713 (1991); Opelika Foundry, 281 NLRB 897, 899 (1986); Groves Truck & Trailer, 281 NLRB 1194, n. 1 (1986). However, mere possession of one of the statutory indicia is not sufficient to confer statutory status unless such power is exercised with independent judgment and not in a routine or clerical manner. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981).

Section 2(11) of the Act sets forth a three-part test for determining supervisory status. Employees are statutory supervisors if they hold the authority to engage in any 1 of the 12 listed supervisory functions; their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and their authority is exercised "in the interest of the employer." NLRB v. Kentucky River Community Care, Inc., et al., 532 U.S. 706, 713 (2001).

The burden of proving supervisory status lies with the party asserting that such status exists. See Kentucky River, *supra*; Michigan Masonic Home, 332 NLRB 1409 (2000). Lack of evidence is construed against the party asserting supervisory status. See Michigan Masonic Home, *supra*. "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, *supra*, at 490. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. See Sears, Roebuck & Co., 304 NLRB 193 (1991).

The Board has found, pursuant to Kentucky River, *supra*, that the exercise of "routine" authority does not require the use of independent judgment in directing the work of other employees. Beverly Health and Rehabilitation Services, 335 NLRB 635, n. 1 (2001).

The Supreme Court noted in Kentucky River that, where an individual assigns or directs work based on orders or regulations issued by the employer, the degree of judgment may be circumscribed to such an extent that it falls below the statutory threshold for a finding of supervisory status. The Court also suggested that "responsible direction" may be defined "by distinguishing employees who direct the manner of others' performance of discrete *tasks* from employees who direct other *employees*, as Section 2(11) requires." 532 NLRB at 720. As the Court acknowledged, "Certain of the Board's decisions appear to have drawn that distinction in the past, see, e.g., Providence Hospital, 320 NLRB 717, 729 (1996)." *Id.*

In Providence Hospital, supra, the Board relied on two cases, General Dynamics Corp., 213 NLRB 851, 859 (1974), and Wurster, Bernardi & Emmons, Inc., 192 NLRB 1049 (1971), to distinguish between employees who direct the manner in which employees perform tasks and the supervisory direction of other employees. In these two cases, the employees in question rotated into the directing or “team leader” positions and, on other occasions, were, in turn, directed by those whom they directed as team leaders. The Board noted that these cases, and other similar cases, shared a “common theme” where:

Section 2(11) supervisory authority does not include the authority of an employee to direct another to perform discrete tasks stemming from the directing employee’s experience, skills, training, or position, such as the direction which is given by a lead or journey level employee to another or apprentice employee, the direction which is given by an employee with specialized skills and training which is incidental to the directing employee’s ability to carry out that skill and training, and the direction which is given by an employee with specialized skills and training to coordinate the activities of other employees with similar specialized skills and training.

See Providence Hospital, supra, at 729.

With regard to discipline, where oral or written reports simply bring substandard performance to the employer’s attention, without recommendations for further discipline, the role in advising the supervisor of the conduct, or reciting the conduct in an incident report, is merely a reporting function. See Passavant Health Center, 284 NLRB 887, 891 (1987).

With regard to supervisory authority to reward employees, or effectively recommend such action, the Board has held that where performance appraisals provide for the rating of employees and there is a direct link between the rating and the amount of a pay increase, this constitutes an exercise of independent judgment that effectively determines a term and condition of employment and is therefore a supervisory function. Wal-Mart Stores, Inc., 335 NLRB 1310 (2001).

The above analysis is applicable to McCanns and to all of the remaining seven individuals whose status is examined herein. The Petitioner asserts that all eight individuals in question possess the authority to assign and responsibly direct employees within the meaning of Section 2(11) of the Act. In addition, the Petitioner asserts that McCanns, Randall, and Frary also have the actual or effective authority to hire, discipline, and reward employees. Based on the foregoing principles, and the entire record, I find that the record evidence establishes that McCanns is a Section 2(11) supervisor.



McCanns exercises a substantial degree of independent judgment in making assignments. Thus, McCanns makes assignments to employees based on her assessment of employees' skills, and she further determines who should fill in for absent employees. In the course of "troubleshooting," McCanns regularly instructs employees to redo tasks that she decides were not done correctly.

Although McCanns has the authority to grant or deny vacation requests, I note that her discretion in this regard is restricted to the extent that the Employer's policies provide that vacations are not being taken during certain busy periods. However, McCanns makes determinations regarding vacation requests based on her assessment of whether there is adequate coverage. This exercise of discretion is consistent with my finding that she responsibly directs employees within the meaning of Section 2(11).

McCanns is responsible for completing the yearly evaluations of all employees under her direction, including those who work on assistant supervisor Sullivan's shift. The record shows that her rating of employees are routinely adopted, and the ratings effectively determine whether employees will receive an annual increase as well as the amount of any increase. In these circumstances, McCanns clearly has the authority to reward employees, or at least to effectively recommend such action.

Secondary indicia of supervisory authority support my determination that McCanns is a supervisor. In this regard, McCanns does not perform any regular custodian duties. She is paid at the top hourly wage grade, and the differential between her grade and that of the custodians ranges from \$5.46 to \$8.19 per hour.

**Bruce Sullivan** is an Assistant Custodial Supervisor. He works from 4:30 a.m. to 2:00 p.m., and is classified at wage grade 17, which has a pay range from \$10.47 to \$15.71 per hour. Thus, he is three grades below McCanns. There is a 1-hour overlap between his and McCanns' shifts so that they can discuss the work. McCanns testified that she receives calls at home or at times comes in early although the record does not provide many details in this regard. Carroll

testified that Sullivan has no role in evaluating employees. In addition, McCanns initially testified that in doing the evaluations, she asks Sullivan for his “advice,” since he is more familiar with the work of some of the custodians who work on the day shift. However, McCanns subsequently testified that, beginning last year, Sullivan “got involved with” and signed the evaluations of approximately 12 day-shift custodians.<sup>3</sup> Sullivan’s job description does not refer to evaluating employees as one of his responsibilities.

McCanns testified that she and Sullivan jointly decide which custodians are assigned to work overtime. Sullivan does not have his own office but he shares access to the computer in McCanns’ office.

When the Employer holds special events, McCanns normally instructs Sullivan which custodian should be assigned, normally based on who is regularly assigned to the building area in which the special event is held. McCanns comes to work early to handle big projects. With regard to assigning employees, according to McCanns, Sullivan is authorized to do whatever is needed to get the job done, and that both “more or less” have the same authority with respect to assigning work. However, according to her job description, McCanns is ultimately responsible for all planning, scheduling, supervision and coordination of the custodial work. Sullivan is responsible for checking custodians’ work, and he has instructed employees to redo tasks. In this regard, Sullivan approves requests for a day off, but must advise McCanns of vacation requests. If an employee requests more than one day off, McCanns normally contacts the employee to verify the request. If more than one employee assigned to the same building wants the same time off, McCanns makes the decision as to who may have the time off.

Sullivan is assigned his own floor to perform custodial work, and he spends three to four hours per day performing such work. McCanns provides Sullivan with assistance from a work-study student so that Sullivan can take care of the supplies for the building in which he performs custodial work.

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<sup>3</sup> The record is unclear as to the manner and extent of Sullivan’s “involvement.”

When McCanns is on vacation (five weeks each year), Sullivan performs most of McCanns' duties. On one occasion when McCanns was on vacation, after an employee had been issued a written reprimand by Stoddard and Dillon and was placed on a close watch, Sullivan issued a counseling report/reprimand to the employee. The record does not indicate what, if any, action resulted from that reprimand.

Contrary to the assertions of the Petitioner I find that the evidence fails to establish that Sullivan is a supervisor under the Act. With regard to assigning employees, McCanns is the person responsible for scheduling employees' work. Although McCanns testified that Sullivan is authorized to do whatever is needed to get the job done, it appears that the extent of independent judgment he exercises in this regard is limited. Sullivan reports to work one hour before McCanns leaves so that they can discuss the status of the work. Additionally, she is available by phone at home. Moreover, Custodial and Business Services Manager Clayton Stoddard is on the premises at 8:00 a.m. Thus, Sullivan is without supervision only from 5:30 a.m. until 8:00 a.m. In addition, McCanns instructs Sullivan regarding which employees to assign to cover special events. Sullivan lacks the authority to independently assign overtime, as that decision is made with input from McCanns. The record is devoid of evidence specifying the circumstances, if any, under which Sullivan can independently assign employees outside their regularly assigned areas. Rather, the record establishes that he may temporarily reassign employees on occasion to make sure a particular job gets done. His ability to check and instruct custodians to redo tasks appears to be routine in nature. Finally, Sullivan's authority to approve time off is limited to requests for a single day off and all such requests must be reported to McCanns.

With regard to evaluating, and thus rewarding, employees, the evidence is conflicting and inconclusive. Sullivan's job description contains no reference to evaluations and Carroll testified that Sullivan has no role in evaluating employees. McCanns' initially testified that, in completing evaluations of some of the employees assigned to Sullivan's shift, she solicits his "advice." However, McCanns testified that Sullivan had recently become "involved with" and signed approximately 12 evaluations. It is unclear from the record the extent of his "involvement" and

whether he effectively recommends any pay increases. In view of this inconclusiveness and inconsistency, I find that the evidence fails to affirmatively establish that Sullivan effectively evaluates and thereby rewards employees.

Although Sullivan substitutes for McCanns during her five weeks off per year, this substitution is insufficiently regular to confer supervisory status on Sullivan, even assuming that he performed McCanns' supervisory duties during those periods. The Board has held that where an individual acts in a supervisory capacity only during the regular supervisor's vacation periods, or on other unscheduled occasions the exercise of such authority is "sporadic and infrequent," and thus insufficient to confer supervisory authority. See Hexacomb Corp., 313 NLRB 983, 984 (1994); St. Francis Med Ctr.-W, 323 NLRB 1046, 1047 (1997).

With regard to secondary indicia, I note that Sullivan is compensated at the same rate as the other individuals in question who are also classified as Assistant Supervisors and whom I have found not be supervisors within the meaning of the Act, as discussed *infra*. I also note that Sullivan does not have his own office, although he does have access to McCanns' office. In addition, unlike McCanns, Sullivan spends three to four hours per day performing assigned custodian duties.

Based on the foregoing, and the record as a whole, I find that the Petitioner has failed to meet its burden of establishing that Sullivan has the authority to assign and/or responsibly direct employees within the meaning of Section 2(11) of the Act, and I shall therefore include him in the unit.

**Douglas Randall** is the other Custodial Supervisor, having responsibility over the custodial work performed in the student dormitories. He is classified at wage grade 20. Randall's office is located in one of the dormitories. Randall does not perform any regularly assigned custodial duties. Two Assistant Supervisors, Ronald Stone and Neil Willmart, report to Randall. In addition, 19 custodians are assigned to the 14 dormitories. There are 175 student

apartments and 3 or 4 university residences that house students. Randall normally works from 6:00 or 6:30 a.m. to 3:30 p.m. Stone and Willmart work from 5:30 a.m. to 2 p.m.

Most custodians have regular assignments during the school year. However, on a daily basis, Randall changes regular assignments when needed, such as when an employee is absent. Randall testified that on these occasions he does not remove a custodian from an area that is already understaffed. In addition, when Randall receives notification that a student apartment needs cleaning, Randall designates a custodian to accompany him to inspect the site. Randall also has the authority to make the job assignments for newly hired custodians. He permanently reassigns custodians to different crews or buildings, and does so about once per year. Randall also testified that he decides when it is necessary to perform certain work on a priority basis. Randall checks the custodians' work on a regular basis, and, although he has the authority to require custodians to redo an assignment, he exercises that authority infrequently. During the summer, Randall assigns custodians to locations that have not been cleaned during the school year, such as the student apartments.

When a custodian wants to transfer between McCanns' and Randall's areas, McCanns, Randall and Stoddard all have "input". Randall testified that on two occasions custodians were transferred into his area over his objections. On about six occasions, Randall effectively recommended employees for transfer to or from his area.

Randall has the authority to independently assign overtime, although it is rarely necessary during the school year. During the summer, Randall frequently assigns custodians to work overtime because student apartments have to be cleaned out quickly. Randall testified that overtime is voluntary and, that 5 of the 21 individuals under his direction volunteer for overtime. When necessary, Randall can also seek volunteers for overtime from McCanns' crew.

Randall testified that he serves on the hiring committee for any position that would be under his direction, and has also served on hiring committees for non-custodian positions. He asserts that not all of his recommendations were followed as to which applicants should be

interviewed. Randall further stated that the only occasion in which the person he recommended was hired was for a position under McCanns' supervision.

Randall is responsible for completing the evaluations of all 21 individuals under his direction. None of the evaluations that Randall prepared were altered after he completed them, and neither Stoddard nor Dillon have discussed those evaluations with him.

Randall has never issued any written discipline during the 12 years that he has been custodial supervisor.

Randall is authorized to grant employee vacation and time off requests. He has never rejected a vacation request, and he testified that he has always "found a way" to get the work done even when a large number of custodians wanted to take their vacations at the same time. In this regard, during the summer, Randall's work force is supplemented by work-study program students and individuals employed by a temporary employment agency.

The record establishes that Randall is a supervisor within the meaning of the Act. In this regard, his duties and responsibilities are essentially the same as those of McCanns, whom I have also found to be a statutory supervisor. With respect to assigning employees, Randall makes daily changes to cover for absent employees and, more significantly, to complete jobs that in his judgment have priority. In addition, he is responsible for making the initial job assignments for new employees and for making permanent reassignments of employees within his area of responsibility. Finally, I note that although Randall has the authority to grant and refuse vacation requests, he has never denied a request and always "found a way" to get the work done. This leads me to conclude that Randall exercises considerable discretion in assigning and reassigning employees.

Randall is also responsible for evaluating 21 employees under his direction. These evaluations have not been altered by higher management. Accordingly, Randall possesses the authority to reward, or at least to effectively recommend the reward of employees.

Secondary indicia support my finding that Randall is a Section 2(11) supervisor. Thus, he has his own office, he is paid at the highest hourly rate, and he does not perform any regularly

assigned custodial work. In addition, the fact that his two Assistant Supervisors work essentially the same hours as Randall and generally provide assistance to Randall is consistent with my finding herein that Randall responsibly directs employees.

Based on the foregoing, and the record as a whole, I find that Randall is a statutory supervisor based on his authority to assign, responsibly direct, and reward employees.

**Neil Willmart** and **Ronald Stone** are grade 17 Assistant Custodial Supervisors who work under Randall's direction. Their work hours are 5:30 a.m. to 2:00 p.m. Stone has his own office in one of the campus buildings. Willmart does not have his own office, but he utilizes Randall's or Stone's office when needed. Randall testified that Willmart and Stone do not have specific buildings for which they have any supervisory authority. Instead, they generally "just assist" Randall.

According to Randall, Willmart's and Stone's duties are "more or less" the same as Randall's when he is absent, and they are "in charge" when he is not present. Willmart and Stone normally spend 60 to 70 percent of their working time performing custodial duties in assigned areas. The remainder of their work time is spent on obtaining and delivering supplies to the custodians that they monitor, and the rest is spent performing miscellaneous tasks, such as delivering broken furniture, and doing work described as "odds and ends." Randall requests that Willmart and Stone perform routine monthly spot checks on the condition of the buildings.

Randall testified that while Willmart and Stone have the authority to independently assign work, such as selecting a crew to strip and wax floors or to shampoo carpets, they do not independently assign work much during the school year.

Willmart and Stone have no role in completing employee evaluations. If they have a problem with an employee, Willmart and Stone discuss the matter with Randall.

The record fails to establish that Willmart or Stone meet any of the Section 2(11) criteria. In this regard, I note that both of them spend the majority of their regular working time performing custodial work, and the remainder of their time on nonsupervisory tasks, including delivering

supplies, attending to broken furniture, and other “odds and ends.” Although Willmart or Stone perform “more or less” the same duties as supervisor Randall in the latter’s absence, any substitution for Randall appears to be sporadic and infrequent. In this regard, I note that Randall is normally present for all but 30 minutes to 1 hour of Willmart’s and Stone’s shift. Moreover, although Randall testified that Willmart and Stone possess the authority to independently select crews for floor waxing and carpet shampooing, this appears to be largely restricted to student apartments during the summer, in light of Randall’s additional testimony that Willmart and Stone do not regularly assign work during the school year.

With regard to secondary criteria, I note that the Willmart’s and Stone’s pay grade is consistent with that of the other individuals in question whom I have found not be statutory supervisors. In addition, unlike Randall, they have no role in the evaluation of employees.

Based on the foregoing, and the record as a whole, and contrary to the Petitioner’s contention, I find that Willmart and Stone do not possess the authority to assign or responsibly direct employees, and do not exercise any of the other Section 2(11) indicia of supervisory status. Accordingly, I shall include them in the unit.

**Richard Bradshaw** is classified as the Assistant Supervisor – Grounds, and he reports directly to grounds and fleet manager Rutherford, who also is responsible for supervising the automotive mechanics. Bradshaw’s job description provides that he is responsible for assigning and scheduling grounds staff, monitoring work to ensure compliance with established departmental standards, and supervising and participating in the loading, unloading, set up and removal of furniture, supplies and special facilities.

Bradshaw is classified at pay level 17, which ranges from \$10.47 and \$15.71 per hour. The record does not establish the pay level of the groundskeepers. Bradshaw did not testify at the hearing. However, according to Associate Human Resource Director Carroll, who testified that he was not personally familiar with Bradshaw’s duties, Bradshaw checks on the progress of work performed by the approximately 15 groundkeepers, who remove snow, mow the lawns,



plant trees and shrubbery, and reconstruct sidewalks. Carroll testified that Grounds and Fleet Manager Rutherford, and not Bradshaw, is responsible for designating which grounds employees operate heavy equipment (snow plows, pay loaders, and dump trucks). Bradshaw performs the same work as the groundkeepers. Carroll testified that he does not know the percentage of working time that Bradshaw spends performing groundkeeper duties. The grounds employees all work the same day shift, except during the winter, when there is a night shift for snow removal. Bradshaw is assigned to the winter night shift. Carroll further testified that Rutherford is responsible for job assignments, and, if there is a need to reassign an employee to perform a special task, Bradshaw confers with Rutherford. However, during the winter, Bradshaw makes “simple” assignments. As noted, there is always a departmental manager on call. Bradshaw confers with Rutherford regarding any possible personnel decisions. Carroll also testified that Bradshaw oversees the groundskeepers in Rutherford’s absence. In this regard, Maintenance Crew Supervisor Frary testified that Bradshaw “sometimes” fills in for Rutherford. The record does not indicate how frequently Bradshaw fills in for Rutherford. Frary states that, in Rutherford’s absence, he has called Bradshaw to have furniture moved or a road plowed.

The evidence fails to establish that Bradshaw possesses any supervisory authority within the meaning of Section 2(11) of the Act. In this regard, while Bradshaw’s job description provides that he is responsible for assigning and scheduling the grounds staff, there is no basis to conclude that he utilizes independent judgment in doing so. Thus, grounds and fleet manager Rutherford decides which grounds employees operate heavy equipment. Rutherford makes the job assignments, and Bradshaw confers with Rutherford before any employee is reassigned to another task. Moreover, the duties of the grounds crew, including mowing, planting, snow removal, and sidewalk reconstruction, appear to be relatively routine in nature. The fact that Rutherford works the same day shift as Bradshaw and the grounds crew, with the exception of the winter snow removal night crew, is consistent with my determination that Bradshaw’s authority to assign work involves little, if any, independent judgment. Moreover, with regard to the

night snow removal crew to which Bradshaw is assigned, Carroll testified that Bradshaw makes “simple” assignments. A department manager is on call at all times. The record also reveals that Bradshaw spends an unspecified amount of his working time performing the same work as other groundskeepers. Finally, I note that Bradshaw’s substitution for Rutherford in the latter’s absence appears to be sporadic and irregular. See Hexacomb Corp., supra; Gaines Elec. Co., 309 NLRB 1077, 1078 (1992).

The secondary factors further support this finding. Thus, Bradshaw does not have an office. His pay grade is consistent with that of the other individuals in question whom I have similarly found not be statutory supervisors.

I find that Bradshaw lacks the authority to assign and/or responsibly direct employees and does not exercise any of the other Section 2(11) indicia. Accordingly, I shall include him in the unit.

**John Frary** is classified as Maintenance Crew Supervisor. His job description provides that he is responsible for planning, directing and participating in the design, planning, procurement, construction, operation, and maintenance of the Employer’s HVAC, plumbing, electrical, carpentry, and associated maintenance and distribution systems. The enumerated duties include monitoring work performance to ensure compliance with established departmental standards and local and state governmental codes; planning, supervising, and assigning work and work schedules; supervising personnel actions, including hiring, merit recommendations, performance appraisals, promotions, transfers, vacation schedules, dismissals, and 24/7 coverage schedule. The specified requirements for his position include a “demonstrated ability to manage staff.”

According to Associate Human Resources Director Carroll, work orders are given to scheduler/planner Roy Wilson, who routes the work to the appropriate supervisor: Rutherford (Grounds and Automobile Maintenance); Stoddard (Custodial); and MacDonald (Skilled Trades Maintenance). When MacDonald receives a work order, he brings it to Frary. Although

Associate Human Resources Director Carroll testified that he was not certain whether it was MacDonald or Frary who assigned the work to specific employees, he asserted that such assignments do not require much discretion, because “plumbers do plumbing work, electricians do electrician work.”

Frary testified that he has an office in the Employer’s physical plant building, in the same area as Dillon, MacDonald, Stoddard, Rutherford, Fuhr, Wilson, Albright and Morgan. There are 25 skilled maintenance mechanics (HVAC, carpenters, electricians, plumbers, boilermakers) under his direction during the school year. Frary works the same hours (7:00 a.m. to 3:30 p.m.) as the maintenance crew, except for a 5-person rotating “24-7” crew. While Frary states that he is responsible for all work requests and work orders that require utilization of the maintenance mechanics, he testified that he jointly decides with Administrative Secretary Jan Morgan, which work requests have priority and which employee to be assigned. All requests for capital improvements must be authorized by department manager Dillon before they are routed to Frary for assignment. Work assignments are normally made on the basis of the skilled trade involved, and are “automatic.” However, Frary states that if the employees are busy, “everybody helps out everybody else.” For example, if Frary receives a work request involving a clogged toilet and if the plumber is busy, he will assign the work to a non-plumber. In addition, Frary tries to equalize the workload and work backlog among his staff, and makes out-of-trade assignments if a particular trade is overburdened. Frary also reassigns employees to other work if, in his judgment, their assigned work has a higher priority. Frary testified that work assignments within trades are generally made without regard to individual skills. However, two newly hired HVAC mechanics are less experienced on some of the HVAC systems, and two are not yet certified in refrigeration removal.

Frary has not disciplined any employees, or recommended discipline, since becoming maintenance crew supervisor in March 2003. Frary testified that he has given permission to employees on the “24-7” crew to call in additional employees to work overtime. In addition, there is a greater need for overtime during the summer because of time restraints in completing work

assignments, and Frary requests employees to work overtime without obtaining prior authorization.

Frary performs very little manual work. Approximately 50 percent of Fray's working time is spent inspecting and evaluating the jobs for which there is a work request and in assigning and distributing the work. About 5 percent of his working day consists of checking the progress of the mechanics' work or responding to complaints about their work. The remainder of the day involves preparation of preventive maintenance schedules and assignments and coordinating painting jobs to be performed by work-study students.

Department Manager Dillon has final hiring authority. Frary has served on the committee that interviewed applicants for two maintenance mechanic positions, as well as applicants for a groundskeeper position. As to the mechanic positions, Frary reviewed applications with safety manager MacDonald and they jointly decided which applicants should be interviewed. Although in both instances the individual that Frary recommended was in fact hired, this was based on Frary's membership on the respective hiring committees and not on his individual hiring recommendation. In this regard, MacDonald also was on the committees and recommended the same individuals for hire. A HVAC mechanic was also on one of those same hiring committees.

MacDonald was in the process of completing employee evaluations when Frary was hired in March 2003. Although, as noted, Frary's job description includes completing performance appraisals, Frary is new to his position and he testified that he has not yet been verbally informed whether he will be responsible for the 2004 evaluations.

Frary testified that he has the independent authority to approve vacation requests. Although he tries to avoid denying such requests, on two occasions he rejected vacation requests because he did not have sufficient staff coverage.

Frary signs employee time sheets only in MacDonald's absence. Frary is classified at hourly pay grade 20, which has an hourly range between \$13.65 and \$20.48 per hour. All of the maintenance mechanics are classified at grade 19, which pays between \$12.46 and \$18.49 per

hour. Frary rotates on a weekly basis with Wilson, McDonald, MacDonald, and Albright as the departmental manager on call.

I conclude that Frary is a supervisor within the meaning of Section 2(11) of the Act. The record shows that, in assigning work to individual employees, Frary exercises considerable discretion to make out-of-trade assignments when any of the specific trades are overburdened, and he can change intra-trade assignments when, in his judgment, a higher priority job needs to be completed.<sup>4</sup> Moreover, the record established that Frary has the independent authority to grant or deny employee's requests for vacation time and has exercised such authority to deny employees' leave based on coverage considerations.

I further find that there is a sufficient basis in the record to indicate that Frary's job duties include evaluating employees' job performance, and, therefore, that he will be able to effectively reward employees. In this regard, among the eight individuals in question, only the job descriptions of Frary, McCanns, and Randall provide that they either "supervise" or "participate" in personnel actions, including merit recommendations and performance appraisals. Inasmuch as the witnesses generally testified that the job descriptions are accurate, and noting that his job description includes the expectation that Frary participate in such personnel actions, I conclude that this is another indicia of Frary's status as a supervisor. I note that Frary testified that, as he was being hired last year, he was given an opportunity to read evaluations that had been prepared by MacDonald.

Secondary indicia further establish that Frary's position is supervisory. Thus, he has his own office, which is located in the same area as the offices of admitted supervisors Dillon, Macdonald, Stoddard, Rutherford, Wilson, and Albright. Frary performs very little manual work. He is paid at the top of the Employer's hourly wage scale. The fact that Frary rotates with other supervisors as the on-call manager further demonstrates his supervisory status.<sup>5</sup>

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<sup>4</sup> In contrast, Frary's use of independent judgment in making other types of assignments is limited because such decisions are based on the appropriate skilled trade involved and are thus "automatic."

<sup>5</sup> Contrary to Petitioner's contentions, I find that the record fails to establish that Frary has the authority to discipline or hire, or to effectively recommend such action. Although Frary and MacDonald decide which

**Gretchen Fullerton** is the Assistant Supervisor of Business Services. She reports to Custodial and Business Services Manager Stoddard. Business Services employs approximately 12 clerks, who perform mail and package deliveries, and duplicating services. All of the employees in Business Services, including Fullerton, work the same day shift. According to Assistant Human Resources Director Carroll, the job assignments for clerks generally do not change, except when necessary to fill in for an absent employee. Fullerton is classified at wage level 18, which ranges between \$11.40 and \$17.10 per hour. The record does not indicate the wage grade of the Business Services clerks. Fullerton did not testify at the hearing.

The sole remaining evidence in the record concerning Fullerton consists of her job description. The job description indicates that Fullerton receives, administers and coordinates completion of duplicating/mail work requests; and receives, logs, coordinates, and prioritizes duplicating and mailing work requests; operates duplicating, mailing, collating, and folding machines and performs duplicating tasks; and she provides administrative and secretarial support to Stoddard. According to the job description, in Stoddard's absence, Fullerton would sign timecards, approve time off requests and ensure coverage of the affected area, and assign duties as required by employee absences or workload.

Noting that the record is quite limited regarding Fullerton,<sup>6</sup> I find that the Petitioner has failed to meet its burden in establishing that Fullerton possesses any indicia of supervisory status. In this regard, I note that the tasks performed by the 12 business services clerks are routine in nature and do not generally change from day to day. In addition, Fullerton's job description indicates that any responsibility that Fullerton has in connection with assigning work to employees is limited to times when Stoddard is absent. In addition, there is no evidence that Fullerton is "in charge" of the Business Services Division. Rather, it appears that Stoddard,

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applicants should be interviewed, the hiring committees make recommendations to Dillon, who makes the final decision. There is no evidence that, when he is serving on a hiring committee, Frary has any greater authority than non-supervisory employees serving on the same committee.

<sup>6</sup> Detailed testimonial evidence about the job duties of the positions at issue herein established that the job descriptions as a general rule, accurately described the duties and responsibilities required of the individuals in these positions.

who works the same hours as Fullerton, is actually in charge. Moreover, Fullerton's job description reveals that her duties are predominantly clerical in nature. In addition, her wage grade falls within the range of other individuals whom the parties have stipulated, or who I have found, to be in the unit. Accordingly, I conclude that the Petitioner has failed to meet its burden to establish that Fullerton is a statutory supervisor.

### **APPROPRIATE UNIT**

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in its facility and services department employed by the Employer at its Potsdam, New York university campus, including all clerks (shipping and receiving clerks, mail clerks, senior postal clerks, supply/distribution clerks, courier/delivery clerks), maintenance mechanics (automotive, boiler operators, carpenters, electricians, HVAC, plumbers), senior groundskeepers, Zamboni maintenance, Cheel Arena maintenance machine operators, duplicating/mailing operator, senior custodians, assistant grounds supervisor, assistant custodial supervisors and assistant business services supervisor; excluding all other clerical employees, confidential employees, custodial supervisors, maintenance crew supervisor, guards and all professional employees and supervisors as defined in the Act and all other employees.<sup>7</sup>

There are approximately 100 employees in the unit herein found appropriate.

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<sup>7</sup> The parties had stipulated that the unit consisted of "all regular full time employees" in the classifications listed. It appears that all of the individuals currently employed in these classifications are considered to be full-time employees. However, it is the Board's established policy to include within an appropriate unit all full-time and regular part-time employees, unless the parties have expressly agreed to exclude regular part-time employees. Morristown-Hamblen Hospital Association, 226 NLRB 76, 79, n. 15 (1976); University of New Haven, Inc., 190 NLRB 478, n. 3 (1971). Inasmuch as there is no evidence of the parties' intention to exclude any regular part-time employees that might be employed, the unit found appropriate herein includes all full-time and regular part-time employees in the appropriate classifications. The Employer on occasion utilizes individuals employed by an outside temporary employment agency to perform custodial functions. In addition, the Employer has utilized university students to perform custodial work under a work-study program. These students are not allowed to earn more than \$2,000 per year. Accordingly, it is clear that the parties do not consider these individuals to be employees within the meaning of the Act, and I find that they are not statutory employees of the Employer.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time, place, and manner to be set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO**

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list,



containing the **full** names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Albany Resident Office, Leo W. O'Brien Federal Building, Room 342, Clinton Avenue and North Pearl Street, Albany, New York 12207, on or before **March 19, 2004**. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **March 26, 2004**.

**DATED** at Buffalo, New York this 12<sup>th</sup> day of March 2004.

**/s/Helen E. Marsh**

**HELEN E. MARSH**, Regional Director  
National Labor Relations Board - Region 3  
Thaddeus J. Dulski Federal Building  
111 West Huron Street - Room 901  
Buffalo, New York 14202

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